

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ACUSHNET COMPANY, a Delaware  
Company,

Plaintiff,

v.

CITY SPORTS, INC., a Massachusetts  
Corporation, JOHN AND JANE DOES  
1-100 and XYZ CORPORATIONS 1-100,

Defendants.

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Civil Action No. 05-11108-DPW

**ANSWER TO COMPLAINT**

Defendant, City Sports, Inc. ("City Sports"), by and through its undersigned attorneys,  
hereby responds to the Complaint of Plaintiff, Acushnet Company ("Acushnet"), as follows:

**JURISDICTION AND VENUE**

1. Paragraph 1 of Plaintiff's Complaint sets forth a legal conclusion as to which no response is required. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 1 of Plaintiff's Complaint.

2. Paragraph 2 of Plaintiff's Complaint sets forth a legal conclusion as to which no response is required. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 2 of Plaintiff's Complaint.

3. Paragraph 3 of Plaintiff's Complaint sets forth a legal conclusion as to which no response is required. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 3 of Plaintiff's Complaint.

4. Paragraph 4 of Plaintiff's Complaint sets forth a legal conclusion as to which no response is required. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 4 of Plaintiff's Complaint.

**THE PARTIES**

5. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 5 of Plaintiff's Complaint.

6. City Sports admits the allegations set forth in Paragraph 6 of Plaintiff's Complaint.

7. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 7 of Plaintiff's Complaint.

8. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 8 of Plaintiff's Complaint.

**BACKGROUND FACTS**

9. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 9 of Plaintiff's Complaint.

10. City Sports admits that the trademark Titleist, to the extent it exists, is recognizable. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 10 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies the remaining allegations set forth in Paragraph 10 of the Plaintiff's Complaint.

11. City Sports admits that a copy of what purports to be a trademark registration is attached to Plaintiff's Complaint as Exhibit A, and is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations set forth in Paragraph 11 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies the remaining allegations set forth in Paragraph 11 of Plaintiff's Complaint.

12. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 12 of Plaintiff's Complaint. To the

extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 12 of Plaintiff's Complaint.

13. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 13 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 13 of Plaintiff's Complaint.

14. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 14 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 14 of Plaintiff's Complaint.

15. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 15 of Plaintiff's Complaint. as to the truth or accuracy of the allegations set forth in Paragraph 13 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 15 of Plaintiff's Complaint.

16. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set for the in Paragraph 16 of Plaintiff's Complaint. as to the truth or accuracy of the allegations set forth in Paragraph 13 of Plaintiff's Complaint. To the extent a further response is required, City Sports denies each and every allegation set forth in Paragraph 16 of Plaintiff's Complaint.

17. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 17 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 17 of the Plaintiff's Complaint.

18. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 18 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 18 of the Plaintiff's Complaint.

19. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 19 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 19 of the Plaintiff's Complaint.

20. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 20 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 20 of the Plaintiff's Complaint.

21. City Sports denies each and every allegation set forth in Paragraph 21 of Plaintiff's Complaint to the extent they relate to City Sports. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 21 to the extent they are directed at other defendants, and is without knowledge or information sufficient to form a belief as to the truth or accuracy of whether counterfeit products are depicted in Exhibit B of Plaintiff's Complaint.

22. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 22 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 22 of the Plaintiff's Complaint.

23. City Sports denies each and every allegation set forth in Paragraph 23 of Plaintiff's Complaint to the extent they are directed at City Sports. City Sports is without

knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 23 to the extent they are directed at other defendants.

24. City Sports denies each and every allegation set forth in Paragraph 24 of Plaintiff's Complaint to the extent they relate to City Sports. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 24 to the extent they are directed at other defendants.

25. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 25 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 25 of the Plaintiff's Complaint.

#### **COUNT ONE**

##### **(Trademark Counterfeiting and Infringement 15 U.S.C. § 1114)**

26. City Sports incorporates its responses to Paragraphs 1 through 25 of Plaintiff's Complaint as if fully set forth herein.

27. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 27 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 27 of the Plaintiff's Complaint.

28. City Sports denies each and every allegation set forth in Paragraph 28 of the Plaintiff's Complaint relating to City Sports.

29. City Sports denies each and every allegation set forth in Paragraph 29 of the Plaintiff's Complaint relating to City Sports.

30. City Sports denies each and every allegation set forth in Paragraph 30 of the Plaintiff's Complaint relating to City Sports.

31. City Sports denies each and every allegation set forth in Paragraph 31 of the Plaintiff's Complaint relating to City Sports.

32. City Sports denies each and every allegation set forth in Paragraph 32 of the Plaintiff's Complaint relating to City Sports.

**COUNT TWO**

**(Unfair Competition and False Designation of Origin 15 U.S.C. § 1125)**

33. City Sports incorporates its responses to Paragraph 1 through 32 of Plaintiff's Complaint as if fully set forth herein.

34. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 34 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 34 of the Plaintiff's Complaint.

35. City Sports denies each and every allegation set forth in Paragraph 34 of the Plaintiff's Complaint, relating to City Sports.

36. City Sports denies each and every allegation set forth in Paragraph 35 of the Plaintiff's Complaint relating to City Sports.

37. City Sports denies each and every allegation set forth in Paragraph 36 of the Plaintiff's Complaint relating to City Sports.

38. City Sports denies each and every allegation set forth in Paragraph 37 of the Plaintiff's Complaint relating to City Sports.

39. City Sports denies each and every allegation set forth in Paragraph 38 of the Plaintiff's Complaint relating to City Sports.

40. City Sports denies each and every allegation set forth in Paragraph 39 of the Plaintiff's Complaint relating to City Sports.

**COUNT THREE**

**(Trademark Dilution 15 U.S.C. § 1125(c))**

41. City Sports incorporates its responses to Paragraphs 1 through 40 of Plaintiff's Complaint as if fully set forth herein.

42. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 42 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 42 of the Plaintiff's Complaint.

43. City Sports denies each and every allegation set forth in Paragraph 43 of the Plaintiff's Complaint relating to City Sports.

44. City Sports denies each and every allegation set forth in Paragraph 44 of the Plaintiff's Complaint relating to City Sports.

45. City Sports denies each and every allegation set forth in Paragraph 45 of the Plaintiff's Complaint relating to City Sports.

46. City Sports denies each and every allegation set forth in Paragraph 46 of the Plaintiff's Complaint relating to City Sports.

47. City Sports denies each and every allegation set forth in Paragraph 47 of the Plaintiff's Complaint relating to City Sports.

**COUNT FOUR**

**(Common Law Trademark and Trade Name Infringement)**

48. City Sports incorporates its responses to Paragraphs 1 through 47 of Plaintiff's Complaint as if fully set forth herein.

49. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 49 of Plaintiff's Complaint. To the

extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 49 of the Plaintiff's Complaint.

50. City Sports denies each and every allegation set forth in Paragraph 50 of the Plaintiff's Complaint relating to City Sports.

51. City Sports denies each and every allegation set forth in Paragraph 51 of the Plaintiff's Complaint relating to City Sports.

52. City Sports denies each and every allegation set forth in Paragraph 52 of the Plaintiff's Complaint relating to City Sports.

53. City Sports denies each and every allegation set forth in Paragraph 53 of the Plaintiff's Complaint relating to City Sports.

54. City Sports denies each and every allegation set forth in Paragraph 54 of the Plaintiff's Complaint relating to City Sports.

55. City Sports denies each and every allegation set forth in Paragraph 55 of the Plaintiff's Complaint relating to City Sports.

#### **COUNT FIVE**

##### **(Common Law Unfair Competition)**

56. City Sports incorporates its responses to Paragraphs 1 through 55 of Plaintiff's Complaint as if fully set forth herein.

57. City Sports is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraph 57 of Plaintiff's Complaint. To the extent that a further response is required, City Sports denies each and every allegation set forth in Paragraph 57 of the Plaintiff's Complaint.

58. City Sports denies each and every allegation set forth in Paragraph 58 of the Plaintiff's Complaint relating to City Sports.



59. City Sports denies each and every allegation set forth in Paragraph 59 of the Plaintiff's Complaint relating to City Sports.

60. City Sports denies each and every allegation set forth in Paragraph 60 of the Plaintiff's Complaint relating to City Sports.

61. City Sports denies each and every allegation set forth in Paragraph 61 of the Plaintiff's Complaint relating to City Sports.

62. City Sports denies each and every allegation set forth in Paragraph 62 of the Plaintiff's Complaint relating to City Sports.

63. City Sports denies each and every allegation set forth in Paragraph 63 of the Plaintiff's Complaint relating to City Sports.

#### **COUNT SIX**

##### **(Violation of the Massachusetts Anti-Dilution Act, M.G.L. c. 110B, Section 12)**

64. City Sports incorporates its responses to Paragraphs 1 through 63 of Plaintiff's Complaint as if fully set forth herein.

65. City Sports denies each and every allegation set forth in Paragraph 65 of the Plaintiff's Complaint relating to City Sports.

66. City Sports denies each and every allegation set forth in Paragraph 66 of the Plaintiff's Complaint relating to City Sports.

67. City Sports denies each and every allegation set forth in Paragraph 67 of the Plaintiff's Complaint relating to City Sports.

68. City Sports denies each and every allegation set forth in Paragraph 68 of the Plaintiff's Complaint relating to City Sports.

69. City Sports denies each and every allegation set forth in Paragraph 69 of the Plaintiff's Complaint relating to City Sports.

**COUNT SEVEN**

**(Unfair and Deceptive Trade Practices – M.G.L. ch. 93A)**

70. City Sports incorporates its responses to Paragraphs 1 through 69 of Plaintiff's Complaint as if fully set forth herein.

71. City Sports denies each and every allegation set forth in Paragraph 71 of the Plaintiff's Complaint, except admits that it is engaged in trade and commerce.

72. City Sports denies each and every allegation set forth in Paragraph 72 of the Plaintiff's Complaint relating to City Sports.

73. City Sports denies each and every allegation set forth in Paragraph 73 of the Plaintiff's Complaint relating to City Sports.

74. City Sports denies each and every allegation set forth in Paragraph 74 of the Plaintiff's Complaint relating to City Sports.

75. City Sports denies each and every allegation set forth in Paragraph 75 of the Plaintiff's Complaint relating to City Sports.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred under the doctrines of waiver, estoppel and/or acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because at all times relevant to this action, City Sports has acted in good faith and not in a knowing or willfully unlawful manner.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because City Sports' conduct was not the cause in fact or the proximate cause of damages alleged by Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery because it failed to mitigate its damages, if any.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because any alleged injury it suffered was due to the wrongful and unlawful conduct of unidentified co-defendants, not any conduct of City Sports.

**NINTH AFFIRMATIVE DEFENSE**

The acts complained of did not occur "primarily and substantially" in Massachusetts, and therefore no claim can be made under Mass. Gen. L. ch. 93A.

**TENTH AFFIRMATIVE DEFENSE**

City Sports reserves the right to assert additional affirmative defenses as they become known.

WHEREFORE, City Sports requests that this Court:

- a. Dismiss this action in its entirety and render judgment in City Sports' favor on each and every count asserted in Plaintiff's Complaint;
- b. Award City Sports their costs and reasonable attorneys' fees incurred in defending this action; and
- c. Award City Sports such further and additional relief as the court deems just and appropriate.

CITY SPORTS, INC.

By its attorneys,

/s/ Susan Gelwick

William L. Prickett (BBO No. 555341)

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